

**WILLIAMSBURG CITY COUNCIL
OCTOBER 13, 2005
MINUTES**

The Williamsburg City Council held its regular monthly meeting on Thursday, October 13, 2005, at 2:00 p.m., in the Council Chambers of the Stryker Building.

ATTENDANCE

Present were Ms. Zeidler, Messrs. Haulman, Scruggs, Chohany and Freiling. Also present were Assistant City Manager Miller, City Attorney Phillips, and City Clerk Crist. Mr. Tuttle was in the UK participating in an international exchange program.

Staff Attending: Department Heads: Nester, Clayton, Serra, Weiler, Walentisch, Deputy Police Chief Sloggie, Assistant Recreation Director Rierson, and Economic Development Director DeWitt.

CALL TO ORDER

Mayor Zeidler called the meeting to order.

COUNCIL MINUTES

Mr. Haulman Moved Approval of the Minutes of September 8, 2005 and the Special Meeting of October 4, 2005. The Motion Was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

MATTERS OF SPECIAL PRIVILEGE

Remembering and Honoring Trist B. McConnell, Resolution #05-22

Mayor Zeidler announced that Council will take up this item when Mr. Bringier McConnell arrives.

PUBLIC HEARINGS

Permitting and Annual Licensing of Massage Therapists, Proposed Ordinance #05-22

Reference for this item was Attorney Phillips report dated October 4, 2005. Mr. Phillips said that these ordinances were proposed at the request of the Commissioner of the Revenue after review of the BPOL tax provisions of the city code relative to legislation enacted since the BPOL taxes were passed and other changes in the law.

Mr. Phillips explained that this first proposed ordinance amends the section of the code regarding licensing of massage therapists by deleting the entire section of the ordinance regarding permitting and health and operational requirements, since the State preempted local permitting procedures. It also modifies the sections of the code regarding the amount of licensing tax charged.

License Taxes for Alcoholic Beverages, Proposed Ordinance #05-23

Reference for this item was Attorney Phillips report dated October 4, 2005. Mr. Phillips explained that this proposed ordinance provides for changes in the licensing of alcoholic beverages. He reviewed the changes as noted in the proposed ordinance regarding

licensing of alcoholic beverages in general and licensing of mixed beverages. He clarified that anything that increases taxes are optional. The fees go into the city's General Fund.

Judy Fuqua, Commissioner of the Revenue, Mr. Phillips, and Council discussed the proposed changes to the ordinance. Ms. Fuqua and Mr. Phillips explained the procedures for collection of banquet license fees for a one day event or a multiple day license, as well as the role of the ABC Board, and the mechanics for collection of fees. Ms. Fuqua said the reason for the changes to the city's ordinance was to mirror State Code.

Mr. Chohany was comfortable with the changes to the ordinance with the exception of item 10 on page 2 that addressed the charge for a banquet license. Mr. Phillips said item 10 could be removed from the ordinance. Council members noted that if left in, it would cost more to administer the charge than the revenue collected.

Council and Ms. Fuqua discussed the sections regarding taxes for wholesale beer and wine licenses. Currently, there are no wholesalers in the city. Mr. Phillips clarified that this tax is added on to the normal business license for alcoholic beverages. It is a revenue enhancement tax.

Mr. Haulman noted this is a fairly complex ordinance, and he questioned if the revenues collected are worth it. Mr. Phillips said the city is permitted to tax with limits, but it does not have to impose the tax.

Mayor Zeidler opened the public hearing on the proposed ordinances #05-22 and #05-23.

No one wished to speak. The public hearing was closed.

Mr. Chohany Moved That City Council Adopt Proposed Ordinance #05-22, An Ordinance to Repeal Article IV of Chapter 9 and Section 18-385 of Article X, Division 3 of Chapter 18, of the Williamsburg Code Pertaining to the Licensing of Therapeutic Massage and to Amend Section 18-381(2)h of Division 2, Article X of Chapter 18 of the Williamsburg Code Regarding Business Privilege License Tax Payable by Massage Parlors. The Motion Was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED ORDINANCE #05-22)

Mr. Haulman Moved That Proposed Ordinance # 05-23 Be Postponed Until Council Receives Additional Information From the Commissioner of the Revenue About the Revenues Generated and Collected From This Ordinance, and Its Impact on Citizens and Businesses. The Motion Was Seconded by Mr. Scruggs.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

Special Privilege Item: Remembering and Honoring Trist B. McConnell, Resolution #05-22 (Mr. Bringier McConnell arrived.)

Mayor Zeidler said she had the privilege of working with Mayor Trist McConnell when she was first on City Council. Everyone admired and loved him, and he took his job as Mayor of the city very seriously and did a wonderful job. Our community felt a real loss with his passing and Council wanted to let his family, and the community, know how much we valued having him with us. She invited Mayor McConnell's son, Bringier McConnell, to the podium.

Mayor Zeidler read the resolution remembering and honoring former Mayor McConnell.

Mr. Bringier McConnell thanked City Council for honoring his father. His father loved serving on City Council and it made him happy. He thanked Council for their service to the community, and thanked them on behalf of his family for the resolution.

Mr. Scruggs Moved That City Council Adopt Resolution #05-22 Remembering and Honoring Trist B. McConnell. The Motion Was Seconded by Mr. Haulman.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

(SEE ATTACHED ADOPTED RESOLUTION #05-22)

PCR #05-024: Request of Williamsburg-James City County Public Schools for a Special Use Permit to Construct a Multipurpose Building Adjacent to Berkeley Middle School

Reference for this item was Mr. Nester's report dated October 13, 2005. Mr. Nester reviewed a map showing the school property and location of the proposed building. The building would be used to provide space for an alternative education program and the second floor used for student services and the GED program. The adjacent warehouse would house Records Management and storage of equipment. Council previously agreed to transfer this property to the schools for the concept of a single building with wings for expansion, not the current proposal of two buildings. Alan Robertson responded by e-mail that the architect believed that splitting the buildings will save about \$100,000. Mr. Robertson was present.

Mr. Nester reviewed the site plan of the parking lot, and elevations of the proposed building and warehouse. One of the concerns noted by staff review, the Site Plan Review, and the Planning Commission, was the issue of traffic flow to the new facility through the bus parking and loading area. A striping plan was developed for traffic flow and access limited to specific times. Planning Commission recommended approval with six contingencies, and further recommended that Council be satisfied that this is indeed the best use of the property. Mr. Nester reviewed the contingencies. Staff was involved in the review of the property transfer, and staff felt then and continues to feel, that the proposed use of the 2.89 acres allows for the best use of this property and allows for flexibility in the future use of the remaining ten acre parcel.

Council and Mr. Nester discussed the opportunity for future pedestrian access and access to the rear ten acre property by an 80 foot right-of-way for a future street. Mr. Nester said

storm drainage details will be worked out in final site plan approval and this proposal will be served by the existing facility.

Mayor Zeidler opened the public hearing.
No one wished to speak. The hearing was closed.

Mr. Alan Robertson confirmed that the building is already funded in the school's CIP in the amount of \$3.5 million. This construction may have to be phased because of costs. Mr. Robertson said that the schools endorse access to this property by a street, not through the parking lot.

Mr. Haulman Moved That City Council Approve the Special Use permit as Recommended by the Planning Commission With the Following Contingencies:

1. *Recordation of a subdivision plat to combine the 2.89 acre parcel acquired from the City with the Berkeley Middle School parcel.*
2. *Construction of a sanitary sewer main to connect this project with the City's Sanitary Sewer Pump Station on Strawberry Plains Road.*
3. *Striping the existing bus parking and loading area as shown on the plan titled "Proposed Striping and Sign Plan, Exhibit for Special Use Permit Multipurpose Building, Berkeley Middle School, Williamsburg/James City County Schools," dated 8/29/05, and prepared by AES Consulting Engineers.*
4. *Materials and design for the proposed buildings to be in accord with the building elevations prepared by HBA Architects, and the exterior building materials shall be brick veneer and synthetic stucco exterior veneer [an Exterior Insulation & Finish System (EIFS) similar to the newest part of Berkeley Middle School].*
5. *Approval of the final site plan by Planning Commission.*
6. *Discontinuance of vehicular access through the bus parking and loading area and connection to the new public street when the public street is built on the south side of the project area.*

The Motion Was Seconded by Mr. Chohany.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

VAC #05-001: Request of Brooks & Hall, David and Linda Coppinger and Marc Frandsen to Vacate Williamsburg Avenue Between Second Street and Penniman Road, Proposed Ordinance #05-27

Reference for this item was Mr. Nester's report dated October 13, 2005. Mr. Nester reviewed a map showing this request to vacate Williamsburg Avenue between Second Street and Penniman Road. This request was approved by Council in 1996, but so much time has gone by that it needed to come back for approval. The Planning Commission has recommended approval. It is the city's policy to sell vacated rights-of-way to the adjacent property owners at 25% of the assessed value (determined by the city's assessor). If the vacation is granted, the city would receive a total of \$21,327 from the adjacent property owners in consideration for the street vacation.

Mr. Phillips explained the 25% rule of thumb evaluation for vacated property. The theory is that the city's right-of-way is equivalent to an easement.

Mr. Nester said that the ordinance is written that all property owners must participate and pay their portion for the vacation. Before a building permit can be issued for this property, the interior lot lines must be vacated.

Mayor Zeidler opened the public hearing.
No one wished to speak. The hearing was closed.

Mr. Scruggs suggested that once this acreage is put together as a whole, the value may likely increase; perhaps the city should revisit the 25% rule.

Mr. Haulman Moved that City Council Approve Proposed Ordinance #05-27, An Ordinance Vacating Williamsburg Avenue Between Second Street and Penniman Road. The Motion Was Seconded by Mr. Chohany.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED ORDINANCE #05-27)

REPORTS

Monthly Financial Statement

The Monthly Financial Report was received and ordered filed.

Ms. Miller pointed out that Room and Meal Tax Revenues were positive for the past two months. Mr. Serra clarified that the Lodging Tax revenue went into effective last July and the money was received in August. Reporting will be one month ahead.

Monthly Departmental Operating Reports

The Monthly Departmental Operating Reports were received and ordered filed.

City Manager Reports

Revision to Capital Improvement Program for Third High School Construction

Reference for this item was Mr. Tuttle's report dated October 6, 2005. Council members received a report on this item at the September Council meeting.

Mr. Serra reported that due to rising construction costs, the low bid for the school was \$9.5 million more than the original cost estimate of \$44.2 million. Cost reduction measures were approved by the School Board, reducing the gap to \$7.2 Million. The Board of Supervisors and School Board have approved the expenditure of additional funds for the school, leaving the city's share at \$639,372. Mr. Serra and Mr. Tuttle recommended that this amount be recognized in the city's CIP for FY 2007 and ask for Council's approval.

Mayor Zeidler was pleased that the County, city, and schools were able to work cooperatively to find the money to close the gap in funding. Mr. Serra clarified that the city was committed to paying 9.63% of the total additional local funding (city and county contributions). Alan Robertson said that a contingent contract (45 days) has been executed

with the bidding contractor. The Mayor said that at the last School Liaison Committee Meeting, it was the consensus of the schools, city, and county, that the schools should not miss the opportunity to enter into this contract because the costs would increase significantly. Mr. Freiling suggested that the Council move forward on this matter.

Mr. Freiling Moved That City Council Approve a Revision to the Five Year Sales Tax Capital Improvement Program Budget By Increasing the FY 2007 Program Year by \$639,372 for additional Construction Funding of the Third High School. The Motion Was Seconded by Mr. Scruggs.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany
No: None

Treyburn Drive--City/State Standard Agreement

Reference for this item was Mr. Tuttle's report dated October 5, 2005, which included a copy of the agreement. Mr. Clayton reported that the agreement with the Virginia Department of Transportation (VDOT) is necessary for the construction, operation, and maintenance of the Treyburn Drive facility. Using an overhead slide, Mr. Clayton reviewed the major provisions of the agreement. He pointed out that after the construction of the road, Sections 3 through 6 of the agreement apply only to the portion of the road located in the city. This is a standard agreement, and staff is recommending Council's approval.

Mr. Chohany Moved That City Council Authorize the City Manager to Execute the City-State Agreement for Treyburn Drive and to Clarify that Paragraphs 3-6 Apply Only to the City Portion of the Roadway. The Motion Was Seconded by Mr. Haulman.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany
No: None

Treyburn Drive--City Owned Right-of-Way

Reference for this item was Mr. Tuttle's report dated October 5, 2005, which included letters from Greenhorne and O'Mara, Inc., the right-of-way agents for the Treyburn Drive Project. Mr. Clayton reviewed an overhead map of the proposed roadway. The city is the largest property owner in terms of right-of-way required for the Treyburn project, but the city needs to sell Parcels 001, 005, and 008, for the right-of-way of Treyburn Drive, appraised and valued at \$483,023. The city will receive payment for the parcels from VDOT using the city's urban allocations. Staff recommended approval.

Mr. Phillips clarified that the portions located in James City County will be conveyed to the State Highway Commission. The portion in the city will remain the property of the city, but will be made available to the project, with no conveyance to the state. The city will be responsible for maintenance of the portion of the road in the city, and the county responsible for its portion.

Mr. Scruggs Moved That City Council Authorize the City Manager to Accept the Offers for Parcels 001, 005, 008, and to Execute the Necessary Documents for the Sale of said Parcels for Treyburn Drive. The Motion Was Seconded by Mr. Haulman.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

City as Site of the 2012 VML Annual Conference, *Proposed Resolution #05-23*

Reference for this item was Mr. Tuttle's report dated October 5, 2005, which included a copy of the proposed resolution. Ms. Miller explained that the resolution is a requirement of the Executive Committee of the Virginia Municipal League in order to formally submit our city as the site of the 2012 Virginia Municipal League Annual Conference. Mayor Zeidler and Ms. Miller will attend the Executive Committee meeting in Richmond to present the resolution.

The city previously hosted two successful conferences in 1990 and 1999. Mayor Zeidler noted that the Williamsburg VML conference has been well attended.

Mr. Scruggs Moved That City Council Adopt Proposed Resolution #05-23, Endorsing the City of Williamsburg as Site of the 2012 Virginia Municipal League Annual Conference. The Motion Was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED RESOLUTION #05-23)

Information Technology (IT) Strategic Plan Adoption

Reference for this item was Mr. Tuttle's report dated October 6, 2005. Ms. Miller said that Council members discussed the revised Financial Procedures Manual and IT Strategic Plan at the October 10 Work Session. Council action is needed to formally approve the IT Strategic Plan.

Mr. Freiling Moved That City Council Approve the City's IT Strategic Plan. The Motion Was Seconded by Mr. Haulman.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

Transient Lodging Taxes, *Proposed Ordinance #05-24*

Reference for this item was Mr. Phillip's report dated October 4, 2005. Mr. Phillips explained that this proposed ordinance amends the City Code to remove reference to the Commissioner of the Revenue as administering the City's Lodging Tax ordinance since it is administered by the Director of Finance. It also changes the administrative provisions to coincide with those of the Meal Tax Ordinance. This is an administrative housekeeping matter.

Mr. Chohany Moved That City Council Adopt Proposed Ordinance #05-24, An Ordinance to Amend Article VII of Chapter 18 of the Williamsburg Code Pertaining to Transient Lodging Taxes, to Further Clarify the Staff Responsibilities for Administration of Transient Lodging Taxes. The Motion Was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED ORDINANCE #05-24)

Administration of the City's Meal Tax, Proposed Ordinance #05-25

Reference for this item was Mr. Phillips report dated October 4, 2005. Mr. Phillips explained that this ordinance reflects the practice of the city to collect a one-time 10% penalty for failure to collect and remit the tax to the city. It also increases the minimum penalty from \$2.00 to \$10.00. This is a housekeeping matter to clarify the administration of the meal taxes.

Mr. Freiling Moved That City Council Adopt Proposed Ordinance #05-25, An Ordinance to Amend Article VIII of Chapter 18 of the Williamsburg Code Pertaining to Meal Taxes, to Further Clarify the Administration of Meal Taxes. The Motion Was Seconded by Mr. Chohany.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED ORDINANCE #05-25)

Assessment of Tax on Personal Property, Proposed Ordinance #05-26

Reference for this item was Mr. Phillips report dated October 4, 2005. This ordinance clarifies the administration of personal property tax returns and payments by the Commissioner of Revenue and Director of Finance. It reflects the existing practices regarding waiver of penalties and interest on personal property.

Mr. Chohany Moved That City Council Adopt Proposed Ordinance #05-26, An Ordinance to Amend Paragraphs (a) and (c) of Section 18-256 Article II of Chapter 18 of the Williamsburg Code, to Further Clarify the Administration of Personal Property Returns and Payments. The Motion Was Seconded by Mr. Freiling.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None (SEE ATTACHED ADOPTED ORDINANCE #05-26)

NEW BUSINESS

Appointments to Boards and Commissions

Mayor Zeidler said that Council members will consider appointments during the Closed Session.

UNFINISHED BUSINESS

Work Session Item Regarding Draft Legislative Agenda: Mr. Scruggs commented that he had received comments regarding the Draft Legislative Agenda and that the perception seems to be that this was the final agenda that Mr. Barlow and Mr. Norment would receive. He clarified that this was the draft agenda, and he expected people to guide him and advise him on what they would like to see the final report. Mayor Zeidler said the draft is on the website and Council would be pleased to receive comments from citizens. The legislative agenda will be discussed again at the November Work Session.

OPEN FORUM

Mayor Zeidler asked for comments.

Jhett Nelson, 101-C Brookwood, provided Council members with an update on activities at the college. To date, the hurricane relief project organized by students has raised \$34,000 and events continue. Mr. Nelson thanked everyone that donated and attended the events. Students appreciated the recent Prince George Street Block Party. He thanked Mr. Scruggs and Mr. Freiling for meeting with students over lunch on October 6. He hoped that these discussions will serve as a great outlet to help solidify the community.

No one else wished to speak.

The forum was closed.

No one else wished to speak. The session was closed.

CLOSED SESSION

Mr. Haulman Moved that City Council go into Closed Session pursuant to Section 2.2-3711 of the Code of Virginia for the purpose of discussing two personnel matters per subparagraph 1, regarding appointments to boards and commissions and personnel, and two legal matters per subparagraph 7 for the purpose of consultation with legal counsel and briefings by staff members, consultants or attorneys pertaining to actual or probably litigation concerning blighted property and rental inspection. The Motion Was Seconded by Mr. Chohany.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

The meeting adjourned at 3:40 p.m. The Mayor called a five-minute recess.

At 5:12 p.m., Council met in Open Session.

Mr. Haulman Moved the Certification of Closed Meeting. The Motion was Seconded by Mr. Chohany.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

OPEN SESSION

CERTIFICATION OF CLOSED MEETING

Date: October 13, 2005

Motion: Mr. Haulman

Second: Mr. Chohany

WHEREAS, the City Council of the City of Williamsburg has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the City Council that such meeting was conducted in conformity with Virginia Law.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Williamsburg hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the City of Williamsburg.

VOTE:

Aye: Freiling, Scruggs, Zeidler, Haulman, Chohany

No: None

Absent During Vote: None

Absent During Meeting: None

Appointments to Boards and Commissions

Mr. Haulman Moved That City Council make the following appointments:

Mr. David Watson to the Williamsburg Redevelopment and Housing Authority to Fill the Unexpired Term of Mr. William Barner, to Expire February 5, 2007, Contingent Upon His Resignation from the Architectural Review Board; and

Mr. Daniel Quarles to the Architectural Review Board, to fill the Unexpired Term of Mr. William Walker, to Expire December 31, 2008; and

Ms. Gail M. Albert to the Colonial Community Criminal Justice Board, for a Two-Year Term to Expire October 13, 2007; and

Mr. Andrew C. Edwards to the Architectural Review Board for the Unexpired Term of Mr. David Watson, to Expire December 31, 2008, Pending Mr. Watson's Resignation from the ARB.

Recorded Vote on the Motion:

Aye: Freiling, Scruggs, Zeidler, Haulman

No: Chohany

The meeting adjourned at 5:15 p.m.

Approved: November 10, 2005

Jeanne Zeidler, Mayor

Shelia Y. Crist
Clerk of Council